

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7025 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PREMPRAKASH SRINIVAS SHARDA

Versus

SIMABEN,WD/O ATULKUMAR SHAKRALAL SHAH

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Appearance:

MR PV NANAVATI for Petitioners

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CORAM : MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE C.K.BUCH

Date of decision: 01/02/99

ORAL JUDGEMENT(Per:Abichandani.J)

The appellants have challenged the judgment and award dated 16.9.98 made by the Motor Accident Claims Tribunal (Aux.) Sabarkantha at Himatnagar awarding compensation of Rs 7,60,500/- in M.A.C.Petition No. 941/95 against the total claim of Rs. 18 lacs.

#. The accident had taken place on 28.8.95 at 7.00 a.m. when deceased Atulkumar was driving his motor bike and his sister Chetanaben was the pillion rider while they were proceeding from Himatnagar to Salal near village Vajapur. At that time the offending truck came at an excessive speed and dashed against the motor bike from rear resulting in the death of Atulkumar and Chetanaben. The widow of Atulkumar and his two children made a claim of Rs. 18 lacs on the footing that Atulkumar who was a reputed young business man of 25 years of age was earning a net yearly income of more than Rs. 1 lac from the business by dealing in foodgrains and oil in the name of his proprietary concern-Chetan Trading Company.

#. The Tribunal on the basis of evidence on record came to a finding that the negligence of the offending truck was clearly established. It relied upon the deposition of witness Mangaji exh. 68, F.I.R exh.47 and Panchnamas exhs. 48 and 49 and rightly came to the conclusion that the truck driver was negligent and had caused the accident.

#. On the aspect of income of the deceased the claimants relied upon the income tax return of Atulkumar of the year 1995-96 at exh. 57 will show his income of Rs. 99,268/- . Since that return was filed after the accident, the Tribunal did not rely upon the same but it the Tribunal took into consideration the earlier income-tax return for the Assessment Year 1994-95. The assessment order exh. 58 shows that the assessment was made at Rs. 67,000/- for that year. The income-tax return was for Rs.63,864/-. On the basis of the return the Tribunal accepted the income at Rs. 63,000/- and worked out compensation on that basis applying the multiplier of 15.

#. The learned advocate appearing for the appellants strenuously contended that the Tribunal had committed an error in accepting the income of Atulkumar at 63,000/and had not taken into account the imponderables which go with the type of the business which he was doing. He argued that the price of foodgrains would fluctuate and therefore, the amount of income would also fluctuate and that there was no guarantee that the income which he earned in that particular year of Rs. 63,000/- would remain constant for all time to come. He relied upon the decision of the Supreme Court in the case of Mc Cann vs. Sheppard & anor. 1974 ACJ 1 in support of his contention.

#. From the assessment order exh.58 it transpires that the turn over of the business of the deceased Atulkumar was more than Rs. 40 lac in the previous year. His income was in fact assessed at Rs. 67,000/on which tax was ordered to be paid. The Tribunal has however, accepted income of Rs. 63,000/- as the basis for working out the compensation. The Tribunal has not taken into account the future prospects of increase of income. The deceased was only 29 years of age and from the turn over of his business it appears that he was doing well in his business and would have increased his business in the ordinary course of events. Adopting the actual income on which the tax was ordered to be paid i.e. assessed income, the Tribunal did not take into account the deductions which he may have claimed and other income which was exempt from income tax. The multiplier applied in the case was only 15 which takes care of all imponderables. Since the future increase in the income was taken into account despite the fact that he was a young business man who would have worked for increasing his business income and since the multiplier of only 15 is applied, we are of the view that the income cannot be said to have been excessively assessed. A deduction of 1/5th of the amount from the yearly income of Rs. 63,000/- made by the Tribunal is in the circumstances of the case proper. We therefore, do not see any ground for interference with the impugned award. The appeal is summarily dismissed.

#. The amount of Rs. 25,000/- said to have been deposited with the registry of this court be transmitted to the office of the Tribunal.